IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

RSA.No. 184 of 2007

AS.257/2006 of DISTRICT COURT, ERNAKULAM
OS.16/1998 of MUNSIFF COURT, KOLENCHERRRY

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APPELLANTS/APPELLANTS/DEFENDANTS

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1. PADMANABHAN, AGED 50, S/O.KOCHUKUTTAN,
   CHENNAN VEETTIL, KADAMATTOM KARA,
   AIKKARANAD NORTH VILLAGE.

2. C.K.RAJAMMA, AGED 45,
   W/O.BHASKARAN, ATTULLIL, ELAMKULAM VILLAGE,
   ELAMKULAM DESOM, KANAYANNOOR TALUK.

3. LAKSHMI W/O.LATE KOCHUKUTTAN,
   CHENNAN VEETTIL, KADAMATTOM KARA,
   AIKKARANAD NORTH VILLAGE.

4. C.K.JANAKI RAVEENDRAN, KARISSERIL VEEDU,
   PANANGUKARA, P.O.KADAVOOR, PAINGOTTOOR VILLAGE.

5. C.K.AMMINI VASU, CHAKODATHU MELIL VEEDU,
   VADAKUNNATHU PUZHA, MULLAKKULAM VILLAGE,
   P.O. PERUVA, KOTTAYAM DISTRICT.

6. C.K.SAVITHRI CHANDRAN, MATTATHIL VEEDU,
   PANGODU KARA P.O., PANGODU, AIKKARANADU VILLAGE.

7. C.K.SARASU, KALLOLICKAL VEEDU,
   KURIANATTU KARA, P.O. KURIANADU,
   MINIPPILLY VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.JOSE JOSEPH ARAYAKUNNEL
SRI.VARGHESE PARAMBIL

RESPONDENTS: RESPONDENTS /PLAINTIFFS:

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1. PAPPU, AGED 76 S/O.AYYAPPAN,
   CHENNAN VEETTIL, KADAMATTOM KARA,
   AIKKARANADU NORTH VILLAGE.

2. MATHAI, AGED 60, S/O.ULAHANNAN,
   NANJIRA VEETTIL, KADAMATTOM KARA,
   AIKKARANADU NORTH VILLAGE.

3. PAULOSE ALIAS ROY, AGED 32 ,
S/O.MATHAI, NANJIRA VEETTIL,
KADAMATTOM KARA OF AIKKARANADU NORTH VILLAGE.

4. CICILY, AGED 25, W/O.ROY,
ANNJIRA VEETTIL, DO. DO.

5. SKARIA, AGED 33, S/O.KURIAKKO,
RESIDING AT PATTANATHOKUDIYIL, KADAMATTOM KARA OF AIKKARANADU NORTH VILLAGE.

6. A.K.NARAYANAN, AGED 59,
THEROTTIKUDIYIL, KADAMATTOM KARA, DO. DO.

7. A.S.BHASKARAN, AGED 50,
BARBER S/O. SANKARAN ATTULLIL, ELAMKULAM VILLAGE,
ELAMKULAM DESOM, KANAYANNOOR TALUK.

8. PARU W/O.PAPPU, AGED 74, HOUSE WIFE,
CHENNAL (CHENNAN) HOUSE, KADAMATTOM KARA,
AIKKARANADU NORTH VILLAGE.

9. C.P.GOPI, S/O.PAPPU, AGED 56,
BARBER WORK, DO. DO.

10. KAVALAMMA, W/O SANKARAN,
HOUSE WIFE, AGED 53, ARAYKKAD, PUTHENPURA HOUSE,
BELLIKUZHI KARA, ERAMALLOOR VILLAGE.

11. C.P.SUKUMARAN, S/O. PAPPU, AGED 50,
BARBER WORK, CHENNAL (CHENNAN) HOUSE,
KADAMATTOM KARA, AIKKARANADU VILLAGE.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 184 OF 2007

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DATED THIS THE 2nd DAY OF MARCH, 2007

JUDGMENT

Defendants in O.S.16 of 1998 on the file of Munsiff Court, Kolenchery are the appellants. Respondents 1 and 2 are the plaintiffs. The suit was filed seeking a declaration of title and fixation of boundaries and for permanent prohibitory injunction. Plaintiffs case was that plaint schedule property having an extent of 24 cents was the part of the property owned by Ayyappan the father of first plaintiff and first defendant and though the document shows the extent as seventy one and a half cents, in fact the extent in the possession of the father under that document was ninety two and a half cents. It was contended that out of the said properties, father sold two cents being north-eastern portion to one Varkey as per sale deed 183/1087 ME and later Varkey sold that property to Kunjan, the brother of first plaintiff and first defendant under Ext.A1 and later under Ext.A2 assignment deed that property was purchased by the plaintiff and hence he has been in possession of the property since then. It was also contended that plaintiff obtained possession of 14 cents of the property as per Ext.A3 mortgage deed from the

father and it is adjacent to the two cents and since then that property has also been in the possession of the plaintiffs along with the property obtained under Ext.A2. Plaintiffs would also contend that his father executed a will whereby 30 cents of the property was bequethed in favour of first defendant and the remaining forty six and a half cents belonging to the father was subsequently partitioned between the legal heirs as per partition deed 1980 of 1959 whereunder eight cents was alloted to plaintiff and thirty eight and a half cents was alloted to defendant. According to plaintiffs along with the sixteen cents referred to earlier, plaintiffs have title to the said eight cents and therefore plaintiffs have title to the plaint schedule property and Ext.A3 mortgage has become irredeemable and plaintiffs are therefore entitled to get a decree for declaration of their title as well as fixation of boundaries. The defendants in the written statement contended that first plaintiff obtained only one and a half cents of the property as per the sale deed and not two cents of the property. It was also contended that plaintiffs did not obtain fourteen cents of the property under Ext.A3 and the father has been in possession of the property and subsequently as per the will and the partition deed first defendant has been in

possession of the property and he had altogether eighty three cents of the property out of which fifty four cents were alienated and the remaining twenty nine cents including the plaint schedule property are in the direct possession of the defendants and plaintiffs are not entitled to get the decree sought for. Learned Munsiff framed the necessary issues.

2. On the side of the plaintiffs, PW1 was examined. Exts.A1 to A4 were marked apart from Exts.C1 and C1(a) report and plan submitted by Commissioner. On the side of the defendants, Dws 1 to 3 were examined and Exts. B1 to B4 were marked. Learned Munsiff, on the evidence found that the father bequethed thirty cents of the property in favour of first defendant and the remaining properties in his possession were partitioned by the legal heirs as per partition deed whereunder thirty eight cents were given to first defendant and eight cents to first plaintiff. It was also found that the fourteen cents covered under Ext.A3 was not partitioned between the legal heirs as it was the property which was covered under that mortgage and the mortgage is irredeemable and plaintiffs have absolute title and possession to the said property. Learned Munsiff also found that the Commissioner has demarcated the properties correctly

in Ext.C2 plan and item No.1 marked therein is the plaint schedule property and plaintiffs have established their title and possession to the property and the boundaries of the property were correctly demarcated by the Commissioner and granted a decree for declaration and fixation of boundary as demarcated by the Commissioiner in Ext.C1(a) plan. Defendants were also retrained by a permanent prohibitory injunction from trespassing into the plaint schedule property. Defendants challenged the decree and judgment before the District Court, Ernakulam in A.S.257 of 2006. Learned District Judge, on re-appreciation of the evidence, confirmed the decree and judgment and dismissed the appeal. It is challenged in this second appeal.

3. Learned counsel appearing for the appellants was heard. The learned counsel took me through the depositions of witnesses as well as exhibits and argued that courts below did not propertly appreciate the respective cases. It was argued that there is no evidence to prove that property covered under Ext.A3 was given possession or that plaintiffs obtained possession of the property and instead evidence establish that defendants are in possession of the property and therefore learned Munsiff and learned District Judge should not have granted the decree for

declaration or fixation of the boundary.

4. On hearing learned counsel for the appellants and going through the judgments of the courts below and perusing the exhibits made available by learned counsel, I do not find any substantial question of law involved in the second appeal. Even according to appellants, the entire property including the disputed plaint schedule property originally belonged to Ayyappan, the father. Appellants are also claiming right and possession under the father. It is also admitted that father had bequethed thirty cents of property in favour of first defendant and after the death of Ayyappan, properties which were available with the father were partitioned between the sharers. In that partition deed thirty eight and a half cents was admittedly alloted to first defendant and first plaintiff was alloted eight cents. Though it was contended in the written statement that plaintiffs obtained one and half cents of the property Ext.A2 instead and of two cents, in the light of Ext.A1 and A2 sale deed, that contention was not pressed. Thus plaintiffs obtained eight cents under the partition deed, and two cents under Ext.A2 sale deed. The fact that Plaintiff was in possession of the ten cents of the property was not disputed. The dispute is with regard to

fourteen cents of property covered under Ext.A3 kanom. Kanom is of 1116 M.E. Admittedly it is now irredeemable. What was contended by learned counsel appearing for appellants was that there is no evidence to prove that plaintiffs obtained possession of Ext.A3 property and instead the properties are in the possession of defendants. Appellants are not claiming that they have got independent right over fourteen cents of the property. They only contend that they obtained the property from the father and thereafter as per re-survey this property was included within the property of the defendants and therefore they have title. As found by the courts below, from the very fact that while the available properties of the father were divided, the fourteen cents originally belonging to the father and mortgated under Ext.A3 were not included in the partition deed is sufficient enough to hold that father was not in possession of the property. Courts below rightly appreciated the evidence. I find no substantial question of law involved.

Second appeal is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

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